IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2587 OF 2006

1. Mrs Kiran Sukhvinder Duggal,)
An Indian Adult Aged 39 years,)
residing at 205 Valencia Sundervan)
Complex, Off Lokhandwala Road,)
Andheri (West), Mumbai 400 053.)

2. Dr. Sukhvinder Singh Duggal,)
An Indian Adult Aged 47 years,)
residing at 205 Valencia Sundervan)
Complex, Off Lokhandwala Road,)
Andheri (West), Mumbai 400 053.) ...Applicants

Versus

1. The State of Maharashtra,)
at the Instance of Oshiwara Police)
Station, F.I.R.NO.350/2006.)

2. Mrs. Rajkumari Kishanlal Hans,)
Residing at 413, 1st Floor,)
Shantivan Mhada, New Link Road,)
Oshiwara, Jogeshwari (West),)
Mumbai 400 102.) ...Respondents

Shri S.B. Keshwani for the Applicants.
Mrs M.M. Deshmukh, A.P.P for the Respondent No.1.
Shri M.M. Chopra i/by Shri Yogesh Israni for the Respondent No.2.
Shri R.K. Sharma for Income Tax Department.

CORAM : A. S. OKA, J.
DATE : NOVEMBER 23, 2006.

ORAL JUDGMENT:

1. My attention has been invited to order dated 03rd August, 2006 passed by this court.

2. Rule. The learned A.P.P waives service for the

State. The learned Advocate for the second Respondent waives service. Taken up for hearing forthwith.

3. By this Application under section 482 of the Code of Criminal Procedure, 1973, a prayer is made for quashing F.I.R. No. 350 of 2006 lodged by the second Respondent alleging commission of offence under section 406 read with section 34 of the Indian Penal Code against the Applicants. The second Respondent has filed an affidavit-in-reply. The second Respondent has set out the circumstances under which the F.I.R was lodged. In paragraph Nos.7 to 9 of the said affidavit-in-reply, the second Respondent has stated thus:

> "7] I further state and submit that in May 2006, I and my entire family were out of India for about 15 days and during which there was also repair work under process in my residential house. Thus, as a measure of security and precaution, I had entrusted a sum of Rs.45,00,000/- [Rupees Forty Five Lacs Only] in cash from to very close and known family of Mrs. Kiran S. Duggal and Dr. Mr. Sukhvindersingh H. Duggal, who also is carrying out official medical check-up of my

recruitment candidates since long time, for safe keeping and with whom we share family relations since long time. These cash moneys were out of the proceeds of the Air Tickets utilised by my firm for flying the Candidates abroad which money was supposed to be paid to the said firm M/s.Trinity Air Tours and Travels Pvt. Ltd. Here to annexed and marked as EXHIBIT 'II' is the copy of the letter dated 02-08-2006, certifying the fact that the said cash money of more than Rs.45,00,000/- [Rupees Forty Five Lacs] has been paid by us after the same being received back from the Applicants, to whom I had originally entrusted.

8] I state and submit that the cash money of Rs.45,00,000/- [Rupees Forty Five Lacs Only] entrusted by me to the Applicants in May 2006 while going out and the same having been received from them after registration of the offence, is my lawful business collections. The same is not at all ill-gotten, unaccounted and nor even remotely concerned with any unfair or unauthorised activity. In respect of all these

transactions my firm has paid all Statutory dues and necessary charges to the State and Central Governments, such as ‘Service Tax’, ‘Tax Deducted at Source (TDS)’, Income Tax, etc. I crave leave to refer to and reply upon the said record as and when produced/directed.

9] I say and submit that in view of the said facts, it would be waste of precious time and also of the State’s scarce resources and no useful purpose would be served if the said proceedings are continued".

4. By order dated 03rd August, 2006, this court directed the Commissioner of Income-Tax to examine whether the said amount of Rs.45,00,000/- is an accounted money. On the basis of the order dated 03rd August, 2006 passed by this court, Shri B. S. Dhillon, Commissioner of Income-Tax, Mumbai has filed affidavit dated 17th November, 2006. In paragraph Nos.2 and 3 of the affidavit he has stated thus:

"2. That in compliance with the order of the Hon’ble Court, I have examined the same with the assistance of my dealing officers

and I have come to the conclusion that the aforesaid amount of Rs.45,00,000/- in cash stands duly accounted in the return of income filed by the assessees Smt.Rajkumari Hans and her son named Shri Sameer K. Hans in the Assessment Year 2006-07.

3. It seems that as the amount of Rs.45,00,000/- in cash came in the limelight before the time limit of 31st August, 2006 before which the return of income was to be filed, therefore, the assessees have reflected this amount in their income tax returns. Although the amount of Rs.45,00,000/- in cash stands duly reflected in the income tax returns and hence, becomes an accounted money, the very existence of this substantial amount of Rs.45,00,000/- in cash does not make the context free from doubt of an intended evasion".

5. Now the aforesaid affidavit discloses that the cash amount of Rs.45,00,000/- has ben disclosed in the income-tax returns filed by the second Respondent and her son in the assessment year 2006-2007. In the last sentence of paragraph No.3, the Commissioner of Income

Tax has stated that the very existence of this substantial amount of Rs.45,00,000/- in cash does not make the context free from doubt of an intended evasion.

6. It appears that there is a settlement between the Applicants and the second Respondent. The dispute was over a sum of Rs.45,00,000/- which is now received back by the second Respondent. In view of this position, continuation of the criminal proceedings will not serve any purpose and will cause unnecessary harassment to both the parties. Therefore, this is a fit case for exercising power under section 482 of the Code of Criminal Procedure, 1973 for quashing the F.I.R. It must be however noted that order passed by this court will not affect any proceedings taken out by the authorities under the Income Tax Act as regards alleged evasion or intended evasion of income-tax.

7. Hence, I pass the following order:

(i) Subject to the clarification mentioned in earlier paragraph, rule is made absolute in terms of prayer clause (a). This order will not prevent the Income-Tax authorities from proceeding in accordance with law.

JUDGE